

Remarks

This is in reply to the official action of January 28, 2007.

A request for a two month extension of time is requested and a check for the \$ 230.00 fee is enclosed.

At the outset, the attorney for the Applicant finds the official action confusing. The prior official action indicated that the claims contained allowable subject matter. Further, the present official action does not acknowledge the response to the prior official action and does not indicate that the prior indication of allowance is withdrawn and does not indicate that the current rejections are new grounds of rejection.

Further, claims 13 and 14-26 are currently rejected under 35 U.S.C. 112 as being indefinite. The objection concerning duplicate language has been removed by amendment but the objection concerning lack of antecedent basis is not understood. The Examiner does not point out what limitations in the claims are not supported in the specification and since language in the Brief Summary of the Invention tracks claim 13 almost verbatim it is not seen where lack of support lies.

The Examiner has also said that it is not clear if the receiving bags are claimed or just intended for use. It is clear that claim 13 does not positively recite the bags. The remaining claims have been amended to be consistent with claim 13.

Claim 13-16, 20, and 24-26 are now rejected under 35 U.S.C. 103(a) as being unpatentable over Glover et al. U.S. Pat. 6,516,823 in view of Kalnay U.S. Pat. 6,766,623.

The apparent withdrawal of the indication of allowability is not understood since the newly cited art is less pertinent than that previously of record.

The present application is an international application having a filing date of October 7, 2003 claiming priority of German Utility Model No. 202 15 597.8 of October 10, 2002. The content of the German Utility Model and the present application are the same thus **the present application has the full benefit of the October 10, 2002 priority date.**

Glover et al. was not patented until February 11, 2003 and was not published before then. Further the present application and Glover et. al. claim different subject matter.

Glover et al. cannot be cited against the present application having an effective filing date well prior to the Glover et. al. grant/publication date.

In any case, Glover et al. is non-analogous art in that it is concerned with a canopy for covering of a play yard. It is quite clear that that none of the members used in the frame of Glover et al. are capable of “receiving and transporting bags to be suspended in the rack” as required by all pending claims. Cross members of Glover et al fold in the middle having a hinge that would provide a weak spot with respect to carrying bag weight. These cross members are clearly not “held together in substantially rigid manner by a pipe clamp reaching over the connection region”. Further Grover et al. does not even have a “base part” as required by reasonable interpretation of all pending claims.

Additionally, it is clear that Grover et al. suggests nothing concerning any structure that “in an unfolded condition the side parts extend parallel to one another and substantially perpendicular to the base part, so that similar racks can be stacked on top of one another with side frame parts aligned with one another” as presently claimed .

It is clear that the Glover device is not designed for and cannot be used as a device for receiving and transporting bags to be suspended in the rack. The horizontal upper struts 58, 60 (see e.g. as shown in figure 3 of Glover et al., are provided with a hinge member 63 arranged to permit folding of the struts downwardly. This means that any hanging bag suspended on the Glover et al struts would tend to fold the struts downwardly to collapse the whole rack. They are simply not designed to carry any load. Further the Glover et al. hinges are not provided with any kind of clamp, pipe or otherwise. To make a frame having guide rails for hanging bags one simply cannot utilize anything taught in Glover et. al. and utilization of this reference is an example of classical hindsight where the claimed invention is dismembered to its parts and a search is conducted to find individual parts in prior art and then the references found as a result of this process are combined, again using the teachings in the invention in order to arrive at a combination that is asserted to be an obvious combination but is clearly not obvious in view of the fact that no person skilled in the art would reach such a combination in the absence of the teachings in the specification and claims of the pending application.

Combining Glover et al. with Kalney et. al., as previously discussed, is based upon classical impermissible hindsight, but even if it were not, the combination is clearly a useless exercise since Kalney et al is not prior art.

Again, the present application is an international application having a filing date of October 7, 2003 claiming priority of German Utility Model No. 202 15 597.8 of October 10, 2002. The content of the German Utility Model and the present application are the same thus **the present application has the full benefit of the October 10, 2002 priority date.**

The Kalney et al. reference has application and grant dates well after October 10, 2002. Kalney et al. thus cannot be cited against the present application.

Again in any case, Kalney et al. is non-analogous art and even if combined with other cited references suggests nothing to anticipate or render obvious any of the presently pending claims. Kalney et al. discloses a foldable framework that simply could not be used for receiving and transporting suspended bags. All pending claims require "struts being pivotal toward one another parallel to the base part". Kalney et al. discloses or suggests no such structure.

The primary top member of Kalney et al. are rafters, not struts, and clearly are not suitable for accepting and transporting bags and are clearly not parallel to a base. The only item that is parallel to the base in Kalney is a fabric cinch. Such a cinch is clearly not analogous to a strut. A strut has three dimensional rigidity and is resistant to bending forces, compressive forces and tensile forces. A fabric cinch is resistant to tensile forces only. One skilled in the art could not have looked to Kalney et al. for any helpful suggestion in making the folding rack of the present invention having "struts being pivotal toward one another parallel to the base part" "for receiving and transporting bags to be suspended in the rack".

Kalney et al. does even have cross members to be "held together in substantially rigid manner by a pipe clamp reaching over the connection region" as required by the present claims.

Further, Kalney et al. suggests nothing concerning any structure that "in an unfolded condition the side parts extend parallel to one another and substantially perpendicular to the base part, so that similar racks can be stacked on top of one another with side frame parts aligned with one another" as presently claimed .

Glover et al. and Kalney et al. have the same critical defects:

They are not citable prior art and even if they were, they suggest nothing helpful for arriving at the presently claimed invention.

No parallel struts are suggested by either reference capable of “receiving and transporting bags to be suspended in the rack”

Neither reference suggests any structure that “in an unfolded condition the side parts extend parallel to one another and substantially perpendicular to the base part, so that similar racks can be stacked on top of one another with side frame parts aligned with one another” as presently claimed , and

Neither reference suggests anything concerning cross members parallel to a base “held together in substantially rigid manner by a pipe clamp reaching over the connection region” as required by the present claims.

The rejection is clearly improper and should be withdrawn !!

Claims 13-16, 20, and 24-26 have been rejected under 35 U.S.C. 103 as being unpatentable over EP 0612301 in view of Glover et al.

This rejection is clearly improper and should be withdrawn.

As previously discussed, Glover et al. is an improper reference. Further, the combination would be based on impermissible hindsight. In any case, even if Glover et al. were a proper reference and the combination was not based upon impermissible hindsight, the combination would not suggest any of the presently pending claims.

The failure of Glover et al. to suggest any of a multitude of limitations in all pending claims has been previously discussed. The EP reference suggests nothing to cure these defects.

The EP reference suggests nothing concerning any structure that “in an unfolded condition the side parts extend parallel to one another and substantially perpendicular to the base part, so that similar racks can be stacked on top of one another with side frame parts aligned with one another” as presently claimed.

In the EP reference, if one should attempt to stack the respective folded frames on top of one another, it is clear that the cross struts 11 and 13 (See e.g. fig. 6 of EP 0 612 301) would overlay side part 12 forming an angle preventing them from being stacked. The EP reference thus teaches away from the present invention.

Further the EP reference suggests nothing concerning cross members parallel to a base “held together in substantially rigid manner by a pipe clamp reaching over the connection region” as required by the present claims.

The upper struts 11 of EP 0 612 301 are designed as rails for guiding the ends of cross bars 4 which are equipped with guiding elements such as rollers 7 shown in figure 3b and figure 11. There is therefore an uninterrupted rail contrary to the necessary structure of the present claims where cross members are “held together in substantially rigid manner by a pipe clamp reaching over the connection region”. The EP reference thus teaches away from the presently claimed invention.

Neither reference suggests any structure that “in an unfolded condition the side parts extend parallel to one another and substantially perpendicular to the base part, so that similar racks can be stacked on top of one another with side frame parts aligned with one another” as presently claimed , and

Neither reference suggests anything concerning cross members parallel to a base “held together in substantially rigid manner by a pipe clamp reaching over the connection region” as required by the present claims.

The combination of these references thus also cannot make those suggestions.

The rejection should be withdrawn.

Claims 17-19, and 21-23 have been rejected under 35 U.S.C. 103 as being unpatentable “over the combination of either Glover et al. in view of Kalnay, or EP 0612301 in view of Glover et al. and further in view of Zheng 6926020.”

This statement of rejection actually contains two separate rejections and is confusing.

As understood, one part of the rejection of these claims is over Glover et al in view of Kaknay et al. This has already been disposed of in prior discussion showing that neither of these references is a citable reference, that the combination even if they were citable is based upon impermissible hindsight and that even if the combination were permissible, the combination does not suggest the claimed invention.

As understood, the second part of this rejection is Glover et al. in view of Zheng. As previously discussed, Glover et al. is not a citable reference and this rejection is thus improper for that reason alone. Even if it were citable, as previously discussed, Glover et al. does not disclose or suggest numerous limitations in the present claims.

Zheng would not cure the lack of suggestion of critical elements of the claims even if the combination could be made. Zheng deals with collapsible structures, e.g. for basketball games. etc. and is thus completely non-analogous art. One would not look to retaining areas for games such as basketball for teachings concerning "A folding rack having a base part and side frame parts , said rack being for receiving and transporting bags to be suspended in the rack" as required by the present claims. Zheng does not even suggest a "base part" and thus certainly does not suggest "struts being pivotal toward one another parallel to the base part" as required by all present claims. Zheng further does not suggest anything concerning cross members parallel to a base "held together in substantially rigid manner by a pipe clamp reaching over the connection region" as required by the present claims. No "pipe clamp reaching over the connection region" is suggested at all.

No parallel struts are suggested by either reference capable of "receiving and transporting bags to be suspended in the rack"

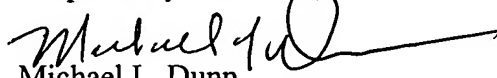
Neither reference suggests any structure that "in an unfolded condition the side parts extend parallel to one another and substantially perpendicular to the base part, so that similar racks can be stacked on top of one another with side frame parts aligned with one another" as presently claimed , and

Neither reference suggests anything concerning cross members parallel to a base “held together in substantially rigid manner by a pipe clamp reaching over the connection region” as required by the present claims.

The rejection is thus improper and should be withdrawn !!!

In view of the foregoing amendments and remarks, it is clear that all rejections should be withdrawn and all claims should be allowed, which action is courteously requested.

Respectfully submitted,



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